



**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

CENAO-TS-G
03-LOP-02

LETTER OF PERMISSION

Effective Date: August 14, 2003

Expiration Date: August 14, 2008

Authorized Activity: Certain navigationally-related recreational and commercial dredging projects.

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (33 U.S.C. 1344) to perform certain navigationally-related recreational and commercial dredging projects (including mooring basins), by either mechanical or hydraulic method in waters of the United States of the Commonwealth of Virginia .

Activities authorized under this letter of permission do not require further authorization under the provisions contained in 33 CFR 325 unless the District Engineer determines, on a case-by-case basis, that additional review is in appropriate. This letter of permission shall not be interpreted as authorizing any work other than which is outlined below.

In order to obtain authorization for any of the activities covered by this letter of permission, the applicant must complete and submit six copies of a Joint Local-State-Federal Permit Application. If the proposed activity qualifies for this Letter of Permission, the Corps of Engineers will send the applicant a letter acknowledging the project satisfies the criteria of the letter of permission. The Corps will coordinate with and solicit comments from the Fish and Wildlife Service, the Environmental Protection Agency, the National Marine Fisheries Service, the Virginia Marine Resources Commission, and the Virginia Department of Environmental Quality. For those projects where the Federal resource agencies do not object or the applicant agrees to incorporate their recommendations, the project may be authorized by a letter of permission provided the special conditions listed below are met.

Special Conditions:

1. A buffer must be maintained between the toe of the dredged channel and the channelward edge of the vegetated wetlands. The buffer distance is to be determined by using the guidance developed by VIMS ($\text{Depth of Dredging} \times 4 = \text{buffer distance}$). No dredging of intertidal mudflats, vegetated wetlands, or submerged aquatic vegetation is authorized.

2. Dredging will connect with channelward ambient depths.

3. Channels will have a bottom width of at least 20 feet except where the Corps determines that safe navigation will not be compromised. In those cases, a reduction in the minimum bottom width to 15 feet shall be allowed.
4. All piers, associated structures (e.g., boatlifts, mooring piles, etc.) and vessels will be located outside the channel.
5. Either an upland dredged material management site or the Craney Island Dredged Material Management Area will be used. The dredged material must have proper erosion and sedimentation controls to prevent re-entry into the waterway. (Craney Island can only be used for placement of dredged material from certain waterways. You may call the Norfolk District at 757.441.7652 to determine if you may use Craney Island.)
6. Any authorized dredging will only be performed during the following periods if located adjacent to certain resources:
 - Shellfish beds: April 1 through June 30 and October 1 through November 30.
 - Submerged Aquatic vegetation: July 1 through March 1.
 - Anadromous Fish Spawning Areas: July 1 through March 15.
7. Dredging will be to a certain depth at mean low water as outlined on drawings provided by the applicant. This permitted depth includes any advance maintenance, allowable overdepth, and/or margin of error. Exceeding this depth will be considered a violation of the terms and conditions of the permit. In order to insure compliance, if you contract for this work, the terms of the agreement should specify that the permitted depth cannot be exceeded. The only way to legally dredge deeper is to apply for, and be granted, a permit modification before the dredging occurs. Both you and your contractor may be subject to substantial fines and penalties for a permit violation.
8. Within 60 days of completion of the dredging, an after-dredge hydrographic survey, prepared by a state-certified engineer or surveyor, must be provided to the Corps.
9. Barges and scows used to transport dredged material may be filled only to a point where no overflow occurs. No overflow pipes are allowed.
10. If Craney Island is used as the dredged material management site, certain special conditions and tolls will apply. These conditions will be included in your permit letter.
11. The dredging authorized by this permit will not exceed a surface area of 2 acres calculated by the length of the area to be dredged times the top width of the area to be dredged.
12. The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work

shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required upon due notice from the Corps of Engineers to remove, relocate, or alter the structural work or obstructions caused thereby without expense to the United States. No claim shall be made against the United States on account of any such removal or alternation.

General Conditions:

1. A Certificate of Compliance must be completed and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1096 within 30 days of completion of the project
2. This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
3. A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative.
4. (a) No activity is authorized under this permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-Federal permittees shall notify the Norfolk District if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.
(b) Authorization of an activity by this permit does not authorize the “take” of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g. an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal “takes” of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world web pages at <http://www.fws.gov/~r9endspp/endspp.html> and http://kingfish.spp.mnfs.gov/tmcintyr/prot_res.html#ES and recovery, respectively.
5. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the Norfolk District has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Norfolk District, if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places and shall not begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Virginia Department of Historic Resources and the National Register of Historic Places.

6. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify the Norfolk District of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort and/or if the site is eligible for listing in the National Register of Historic Places.
7. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
8. Authorized activities must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
9. No activity may cause more than a minimal adverse effect on navigation.
10. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species, which normally migrate through the area, unless the activity's primary purpose is to impound water.
11. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.
12. The construction or work authorized by this permit will be conducted in a manner so as to avoid any degradation of water quality and/or damage to aquatic life where possible, and minimize any degradation where unavoidable. Also, you will employ measures to prevent or control spills of fuels or lubricants from entering the waterway.
13. Permittees are expected to fully comply with Virginia Administrative Code 9 VAC 25-260-10, Water Quality Standards and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality.
14. The permittee will make every reasonable effort to conduct the construction or operation of the work authorized by this permit in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.
15. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
16. The permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

17. Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.
18. The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.
19. In order to transfer this permit, the transferee must supply the Norfolk District with a written request to transfer the permit.
20. Should you be unable to complete the authorized activity in the time limit provided, you must submit your request for a time extension to this office for consideration at least one month before the permit expiration date.
21. In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.
22. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal projects.
 - e. This permit does not grant any Corps real estate rights. If real estate rights are needed from the Corps, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 441-7735.
23. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
24. The Norfolk District may reevaluate its decision on your authorization, under this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.

- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 20 above).
- c. Significant new information surfaces, which this office did not consider in reaching the original decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 406).

25. This regional permit, unless further modified, suspended or revoked, will be in effect until August 14, 2008. Upon expiration, it may be considered for revalidation.

Date

Yvonne J. Prettyman-Beck
Colonel, Corps of Engineers
Commanding